STATE OF MICHIGAN

COURT OF APPEALS

JOHN HOLETON and PAULINE HOLETON, Plaintiffs-Appellants, v CITY OF LIVONIA, LAURA M. TOY, MAUREEN MILLER BROSNAN, JOHN R. PASTOR, BRANDON M. KRITZMAN, JAMES C. MCCANN, JOE LAURA, and THOMAS A. ROBINSON, Defendants-Appellees.	UNPUBLISHED July 21, 2015 No. 321501 Wayne Circuit Court LC No. 14-000104-CZ

Before: HOEKSTRA, P.J., and JANSEN and METER, JJ.

PER CURIAM.

In this action brought pursuant to Michigan's Open Meetings Act (OMA), MCL 15.261 *et seq*., plaintiffs appeal by right the circuit court's order granting summary disposition in favor of defendants and denying their motion for leave to amend the pleadings. We affirm in part, reverse in part, and remand for further proceedings consistent with this opinion.

I

Plaintiffs, husband and wife, are community activists who oppose the installation of advanced metering infrastructure (AMI) meters, also known as "smart meters," by the Detroit Edison Company (DTE). Plaintiffs regularly present remarks at public meetings in an effort to persuade local units of governments to adopt resolutions opposing AMI meters.

Plaintiffs addressed the Livonia City Council during the public-comment period of its regular meetings on January 11, 2012, February 8, 2012, and February 22, 2012. Plaintiff John Holeton (John) addressed the Livonia City Council during the public-comment period of its regular meeting on March 7, 2012. Plaintiff Pauline Holeton (Pauline) addressed the Livonia City Council's Infrastructure & Community Transit Committee (ICT Committee) meeting on March 19, 2012.

Plaintiffs allege that they were mistreated and repeatedly interrupted by the members of the Livonia City Council during these appearances. They complain that their comments were regularly cut short and that they were not afforded the full time allotted to other members of the

public. They contend that they were harangued for not complying with the Livonia City Council's standing rules pertaining to citizen participation, admonished to direct their comments to the chair, and improperly rebuked for directly questioning audience members and failing to comply with the rules of parliamentary procedure. With respect to the ICT Committee meeting on March 19, 2012, plaintiffs assert that Pauline was interrupted and criticized by defendant Maureen Brosnan,[1] who cautioned her to be "civilized and polite" and to "[t]one it down." Ultimately, Pauline was not permitted to complete her remarks at the ICT Committee meeting; she was forcibly removed from the meeting by a Livonia police officer.

On January 6, 2014, plaintiffs sued the city of Livonia and the seven members of the Livonia City Council[2] in their official and individual capacities. Plaintiffs alleged that defendants had violated the OMA by (1) requiring plaintiffs to state their home address before speaking, (2) repeatedly cutting them off while they were speaking, (3) imposing unreasonably short time limits for plaintiffs' comments, (4) requiring plaintiffs to direct their comments to the chair, (5) arbitrarily and capriciously applying the standing rules pertaining to citizen participation, (6) addressing plaintiffs in a derogatory tone and referring to their remarks as "shenanigans," (7) engaging in harassing and threatening conduct designed to discourage plaintiffs from exercising their right to public comment, and (8) threatening to eject plaintiffs from the room and ban them from future city council meetings. With respect to the ICT Committee meeting of March 19, 2012, plaintiffs alleged that defendant Brosnan had violated the OMA by (1) insisting that Pauline direct her comments to the chair, (2) not allowing Pauline to directly question a DTE employee who was present in the room, (3) "raising her voice, shouting, interrupting, pounding her gavel, threatening, and implicitly changing the rules of audience participation," and (4) directing a police officer to eject Pauline from the room when she had not breached the peace or engaged in illegal behavior.

Plaintiffs sought injunctive and declaratory relief under § 11 of the OMA, MCL 15.271. In particular, plaintiffs asked the circuit court to declare that defendants had violated the OMA and to enjoin any further noncompliance with the OMA. Plaintiffs also sought statutory damages from the individual defendants under § 13 of the OMA, MCL 15.273.

In lieu of answering the complaint, defendants moved for summary disposition. Defendants first argued that plaintiffs could not maintain their claims against the city of Livonia because the city was not a "public body" within the meaning of MCL 15.262(a). In essence, defendants argued that plaintiffs had sued the wrong party—the city of Livonia instead of the Livonia City Council. Defendants also argued that plaintiffs' claims were barred by the 180-day period of limitations set forth in MCL 15.273(2). Defendants noted that the last alleged violation

[1] Defendant Brosnan chaired the ICT Committee meeting.

[2] Defendants Toy, Brosnan, Pastor, Kritzman, McCann, Laura, and Robinson were the seven members of the Livonia City Council at the time of the events that form the basis of plaintiffs' claims. As of January 1, 2014, defendants McCann, Laura, and Robinson are no longer members of the city council.

of the OMA giving rise to plaintiffs' claims had occurred on March 19, 2012, but that plaintiffs had not filed their complaint until January 6, 2014.

In response, plaintiffs observed that they were seeking both injunctive and declaratory relief under MCL 15.271, and statutory damages from the individual defendants under MCL 15.273. They argued that the 180-day period of limitations applied only to their claim for statutory damages under MCL 15.273—not to their request for equitable relief.

On February 24, 2014, plaintiffs moved for leave to amend the complaint to add as parties the Livonia City Council, ICT Committee, and Livonia police officer who removed Pauline from the ICT Committee meeting on March 19, 2012. Plaintiffs also sought to add various tort claims against the police officer.

After considering the parties' arguments on April 3, 2014, the circuit court determined that the 180-day period of limitations set forth in MCL 15.273(2) applied to all of plaintiffs' claims. The circuit court concluded that plaintiffs' claims were time-barred and granted summary disposition in favor of defendants on this ground. The circuit court also denied plaintiffs' motion to file a first amended complaint.

II

We review de novo the circuit court's grant or denial of a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). "Summary disposition is properly granted pursuant to MCR 2.116(C)(7) when the claim is barred by the applicable period of limitations." *Adams v Adams (On Reconsideration)*, 276 Mich App 704, 708; 742 NW2d 399 (2007). "Whether a claim is barred by the applicable period of limitations is a question of law that we review de novo." *Id*.

Issues of statutory interpretation are questions of law that we review de novo on appeal. *Lash v Traverse City*, 479 Mich 180, 186; 735 NW2d 628 (2007). We similarly review de novo the applicability of the equitable doctrine of laches. *Knight v Northpointe Bank*, 300 Mich App 109, 113; 832 NW2d 439 (2013). We review for an abuse of discretion the circuit court's denial of a motion for leave to amend the complaint. *Franchino v Franchino*, 263 Mich App 172, 189; 687 NW2d 620 (2004).

III

The circuit court properly granted summary disposition in favor of the individual defendants with respect to plaintiffs' claim for statutory damages under MCL 15.273. An action for damages under MCL 15.273(1) must be commenced within 180 days of the alleged violation. MCL 15.273(2); *Rasch v City of East Jordan*, 141 Mich App 336, 339; 367 NW2d 856 (1985). It is undisputed that defendants' last alleged violation of the OMA occurred on March 19, 2012, more than 180 days before the filing of plaintiffs' complaint.

IV

The more important question is whether plaintiffs' claims for injunctive and declaratory relief under MCL 15.271 were barred by this same 180-day period of limitations. We conclude that they were not.

By its express terms, the 180-day limitations period set forth in MCL 15.273(2) only applies to "[a]n action under this section"—namely, an action for damages under MCL 15.273. See *Rasch*, 141 Mich App at 338-339. It is true that MCL 15.273(3) refers to MCL 15.271, providing that an action for damages under MCL 15.273(1) "may be joined with" an action for injunctive or declaratory relief under MCL 15.271. However, the statutory language makes clear that the 180-day limitations period of MCL 15.273(2) does not govern claims brought under any other section of the OMA.

The 180-day limitations period of MCL 15.273(2) does not apply to claims for injunctive or declaratory relief brought pursuant to MCL 15.271. See *Detroit News, Inc v Detroit*, 185 Mich App 296, 301-302; 460 NW2d 312 (1990) (stating that "[t]here is no limitations period under MCL 15.271"). Nor do the OMA's shorter 60-day and 30-day limitations periods of MCL 15.270(3)(a) and (b)[3] apply to claims brought under MCL 15.271. *Detroit News*, 185 Mich App at 301-302; see also *Hubka v Pennfield Twp*, 197 Mich App 117, 123; 494 NW2d 800 (1992), rev'd in part on other grounds 443 Mich 864 (1993). The circuit court erred by ruling that plaintiffs' claims for injunctive and declaratory relief under MCL 15.271 were barred by the 180-day limitations period of MCL 15.273(2).

V

Nevertheless, we conclude that the circuit court reached the correct result because plaintiffs' claims for injunctive and declaratory relief under MCL 15.271 were barred by the doctrine of laches.

The entire structure of the OMA requires plaintiffs to act diligently and without delay. As already discussed, various sections of the OMA contain their own internal periods of limitations, ranging from 30 to 180 days in length. See, e.g., MCL 15.270(3)(a) and (b); MCL 15.273(2). Given the extreme brevity of these internal limitations periods, it is manifest that the Legislature intended to mandate promptness and expediency in the commencement and prosecution of OMA actions.

As explained previously, MCL 15.271 does not contain its own limitations period. *Detroit News*, 185 Mich App at 301-302. This is not surprising, since injunctive relief and declaratory judgment are equitable remedies, and actions under MCL 15.271 are therefore primarily equitable in nature. See *Coffee-Rich, Inc v Dep't of Agriculture*, 1 Mich App 225, 228; 135 NW2d 594 (1965). It is the doctrine of laches, not a statute of limitations, that typically serves to bar untimely equitable claims. *Romulus City Treasurer v Wayne Co Drain Comm'r*,

[3] The 60-day and 30-day limitations periods of MCL 15.270(3)(a) and (b) only apply when a plaintiff seeks to invalidate the action of a public body taken at a closed meeting. *Detroit News*, 185 Mich App at 301-302.

413 Mich 728, 749; 322 NW2d 152 (1982); *Taylor v S S Kresge Co*, 332 Mich 65, 75-76; 50 NW2d 851 (1952).

Equity aids the vigilant, not those who slumber on their rights. *Douglass v Douglass*, 72 Mich 86, 98; 40 NW 177 (1888). "This rule is designed to promote diligence on the part of suitors; to discourage laches, by making it a bar to relief." *Id*. Courts look to the statutes of limitations governing analogous legal claims to guide them in applying the doctrine of laches. *Romulus City Treasurer*, 413 Mich at 749. In light of the very short limitations periods that are provided for similar actions under the OMA, we conclude that plaintiffs' equitable claims for injunctive and declaratory relief under MCL 15.271—filed almost two years after defendants' last alleged violation of the OMA—were stale and untimely. The circuit court properly granted summary disposition in favor of defendants with respect to plaintiffs' claims for injunctive and declaratory relief, albeit for the wrong reason. See *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000) (observing that "we will not reverse the court's order when the right result was reached for the wrong reason").

VI

Given that plaintiffs' OMA claims were barred by the period of limitations and the doctrine of laches, any amendment of the pleadings to add the Livonia City Council and ICT Committee as parties would have been futile. *Miller v Chapman Contracting*, 477 Mich 102, 108; 730 NW2d 462 (2007). The circuit court properly denied plaintiffs' motion for leave to amend the complaint insofar as plaintiffs sought to add these two parties for purposes of their OMA claims.

The circuit court erred, however, by denying plaintiffs' request for leave (1) to add the Livonia police officer who removed Pauline from the ICT Committee meeting on March 19, 2012, and (2) to assert several new claims against him. In their motion for leave to amend the complaint, dated February 24, 2014,[4] plaintiffs sought to add the police officer as a party defendant and to assert claims of assault, battery, false arrest, false imprisonment,[5] and violation of Pauline's civil rights under 42 USC 1983 against him. The circuit court ruled that the proposed intentional tort claims were barred by the applicable statute of limitations and instructed plaintiffs' counsel that he should file the § 1983 claim in federal court. This was error.

[4] Contrary to the assertion of defendants' counsel at oral argument before this Court, plaintiffs did file a written motion for leave to amend the pleadings on February 24, 2014. See MCR 2.118(A)(4). Plaintiffs attached their proposed first amended complaint, which named the officer as a party defendant and set forth several causes of action against him.

[5] "[F]alse arrest is an illegal or unjustified arrest, and the guilt or innocence of the person arrested is irrelevant." *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 18; 672 NW2d 351 (2003). It has been said that false arrest and false imprisonment are not separate torts, and that false arrest is simply one way to commit the tort of false imprisonment. *Id.* at 17 n 15.

In general, leave to amend the pleadings should be freely granted; a motion for leave to amend should be denied only for particularized reasons. MCR 2.118(A)(2); see also *Wormsbacher v Seaver Title Co*, 284 Mich App 1, 8; 772 NW2d 827 (2009).

The period of limitations is two years for claims alleging assault, battery, false imprisonment, and false arrest. MCL 600.5805(2). "Although 42 USC 1983 is a federal statute, state courts exercise concurrent jurisdiction over § 1983 claims." *Dickerson v Marquette Prison Warden*, 99 Mich App 630, 634; 298 NW2d 841 (1980). It is well-settled that the period of limitations for § 1983 actions is three years in Michigan. MCL 600.5805(10); *Chippewa Trading Co v Cox*, 365 F3d 538, 543 (CA 6, 2004); see also *Wilson v Garcia*, 471 US 261, 280; 105 S Ct 1938; 85 L Ed 2d 254 (1985).

The police officer's allegedly tortious actions occurred at the ICT Committee meeting on March 19, 2012. As noted previously, plaintiffs submitted their motion for leave to file a first amended complaint on February 24, 2014—less than two years later. Although the relation-back doctrine does not generally apply to the addition of new parties, *Miller*, 477 Mich at 108, plaintiffs' motion for leave to add the police officer as a party defendant (and to assert the new intentional tort and § 1983 claims against him) was filed less than two years after the incident that gave rise to the allegations. Accordingly, the amendments pertaining to the Livonia police officer and the proposed claims against him were not barred by the applicable limitations periods and would not have been futile. The circuit court abused its discretion by denying plaintiffs' motion for leave to add the police officer as a party defendant and to set forth the proposed assault, battery, false imprisonment, false arrest, and § 1983 claims. See *In re Waters Drainage Dist*, 296 Mich App 214, 220; 818 NW2d 478 (2012) (noting that "[a] court by definition abuses its discretion when it makes an error of law").

We reverse in part the circuit court's denial of plaintiffs' motion for leave to amend the complaint. We remand this matter to the circuit court with instructions to allow plaintiffs to file their first amended complaint naming the Livonia police officer as a defendant and setting forth the new assault, battery, false arrest, false imprisonment, and § 1983 claims against him.[6]

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs pursuant to MCR 7.219, no party having prevailed in full.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Patrick M. Meter

[6] Although we hold that plaintiffs' proposed assault, battery, false imprisonment, false arrest, and § 1983 claims were not barred by the applicable periods of limitations, we express no opinion on the merits of these claims. Nor have we considered whether the Livonia police officer in question is entitled to governmental immunity. These are matters for the circuit court on remand.